

How does the Constitution protect the right to due process of law?

LESSON PURPOSE

In this lesson we will look at another part of the Constitution that is concerned with fairness. This is the idea of due process of law. The due process clause is intended to guarantee that government will use fair procedures when gathering information and making decisions that affect our rights to life, liberty, or property.

When you finish this lesson you should be able to explain in general terms what due process means. You should also be able to explain how due process applies to the rights of juveniles who are accused of breaking the law.

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TERMS TO UNDERSTAND



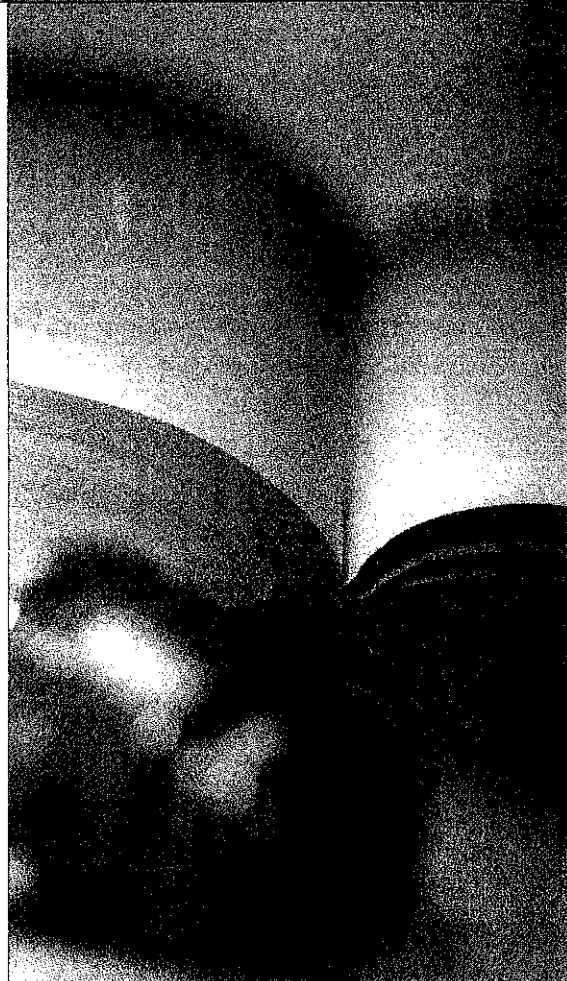
due process
Fifth Amendment
procedure

What is due process of law?

It is difficult to define due process of law exactly. We may say that **due process** is the right to be treated fairly by government. There are two important ways this meaning is applied.

- ❶ Due process means that the **procedures**, or methods used to conduct hearings and to apply and enforce the law, must be fair and reasonable. All branches of the federal and state governments must use fair procedures when they are carrying out their responsibilities.
- ❷ Due process also means that the **content** of laws that legislatures pass must be fair and reasonable. Congress and the state legislatures cannot pass laws that place unfair or unreasonable limitations on people's rights to life, liberty, or property.

The ideas of due process can be found in the body of the Constitution and several amendments. The Fifth and Fourteenth Amendments specifically use the term due process of law.



*In what way does due process
limit the powers of government?*

The Fifth Amendment does not mention state governments. Therefore, this amendment applies only to actions of the federal government.



What rights do you think you should have if you were to be accused of breaking the law?

The Fifth Amendment says

No Person shall...be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment includes actions by the states. The Fourteenth Amendment says

nor shall any State deprive any person of life, liberty, or property, without due process of law.

In the remainder of this lesson we focus on the first meaning of due process: members of all branches of government must use fair procedures when fulfilling their responsibilities.

We will concentrate on the rights of persons suspected or accused of crimes. We examine the procedures that were followed in a situation that led to a famous U.S. Supreme Court case called *In re Gault* (1967). This case concerns the treatment of a juvenile accused of a crime.

What are fair procedures?

Work with a group of three to five students to complete the following exercise.

- ① Read the summary of the *Gault* case.
- ② Make a list of unfair procedures used by government officials in the case.
- ③ Read the Fifth, Sixth, and Eighth Amendments to the Constitution. Identify the parts of each Amendment that apply to this case.
- ④ Evaluate the facts, then take and defend a position on how the U.S. Supreme Court should have dealt with *In re Gault*.

In re Gault (1967)

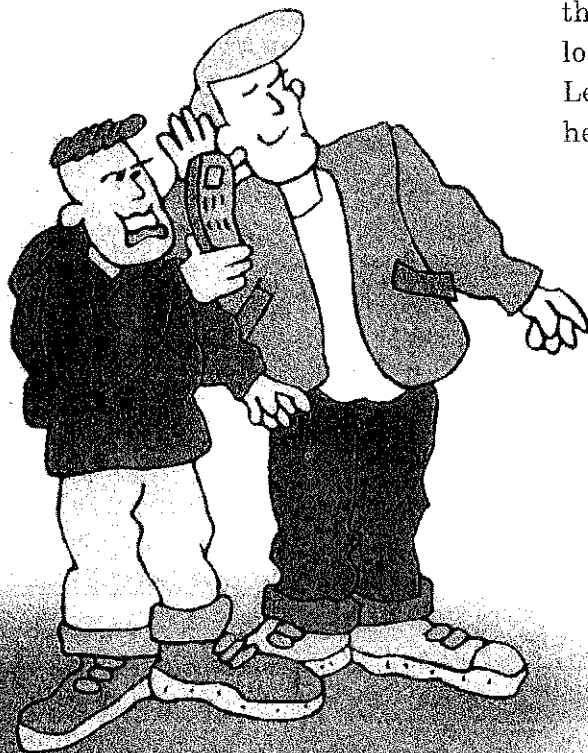
Gerald Gault was fifteen years old. On the morning of June 8, 1964, the sheriff of Gila County, Arizona, arrested Gerald and a friend, Ronald Lewis. The sheriff took the boys to the Children's Detention Home.

The boys were accused of telephoning a neighbor, Mrs. Cook, and saying offensive and obscene things to her. Mrs. Cook had then called the sheriff.

While the boys were in detention, Officer Flagg, a deputy probation officer, questioned them. The boys admitted making the calls. Each boy blamed the other.

At the time that Gerald was arrested, his parents were at work. The sheriff who arrested the boys did not tell the parents that Gerald was being taken to a detention home. No one from the sheriff's office called the Gault home.

When Gerald's mother arrived home that evening, she sent her older son to look for Gerald. At the home of Ronald Lewis, he learned that Gerald was being held in the detention home.



Mrs. Gault went to the detention home and Officer Flagg explained why the sheriff had arrested her son. Officer Flagg informed Mrs. Gault that there would be a hearing in juvenile court the next afternoon.

Gerald, his mother, Officer Flagg, and the judge were the only ones at the hearing. Mrs. Cook was not present. During the hearing, no one was asked to swear to tell the truth. No record was made of what was said. No lawyers were present.

At later hearings, the judge, Mrs. Gault, and Officer Flagg agreed on some things that were said at the first hearing but disagreed about others. They agreed that the judge had asked Gerald about the telephone call. They disagreed about what Gerald answered.

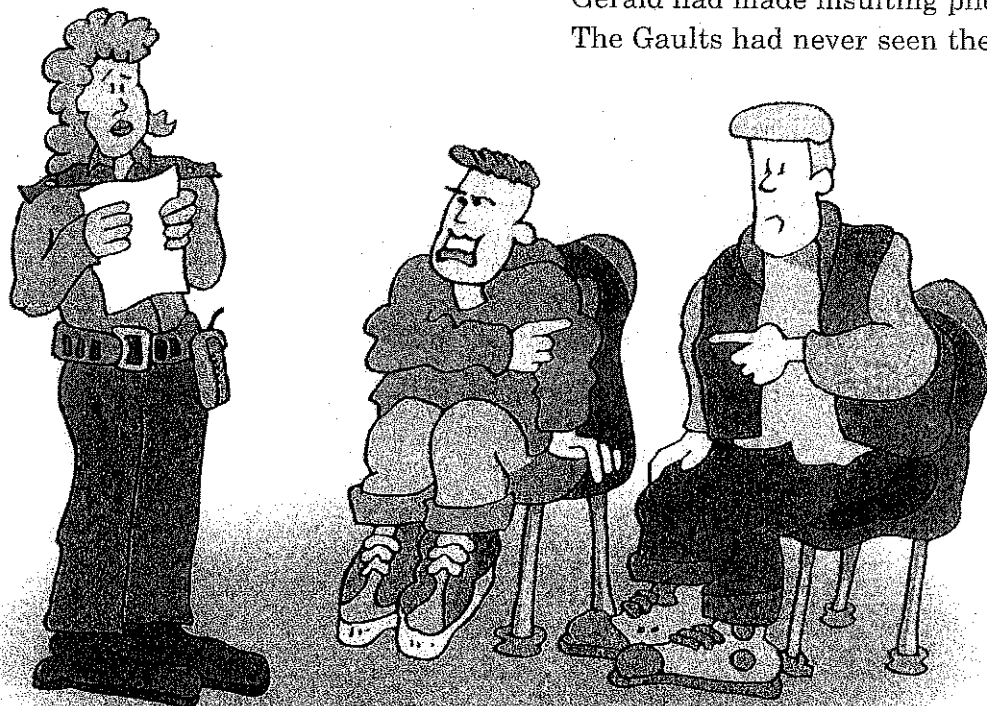
His mother remembered that Gerald said he had dialed Mrs. Cook's number

and then handed the telephone to Ronald. Officer Flagg said that Gerald had admitted making one insulting remark.

Two or three days later, Officer Flagg drove Gerald home. On that day, Gerald's mother received a note from the court that was written on plain paper. The note said, "Mrs. Gault, Judge McGhee has set Monday, June 15, 1964 at 11 A.M. as the date for further hearings on Gerald's delinquency."

On June 15, the Gaults appeared in court. Mrs. Gault had requested that Mrs. Cook be present but she did not attend. The judge, who had not spoken with Mrs. Cook, said that it was not necessary that Mrs. Cook be in court. Again, no one was asked to swear to tell the truth and no record was made of this hearing.

During the hearing, Officer Flagg handed the judge a report saying that Gerald had made insulting phone calls. The Gaults had never seen the report.

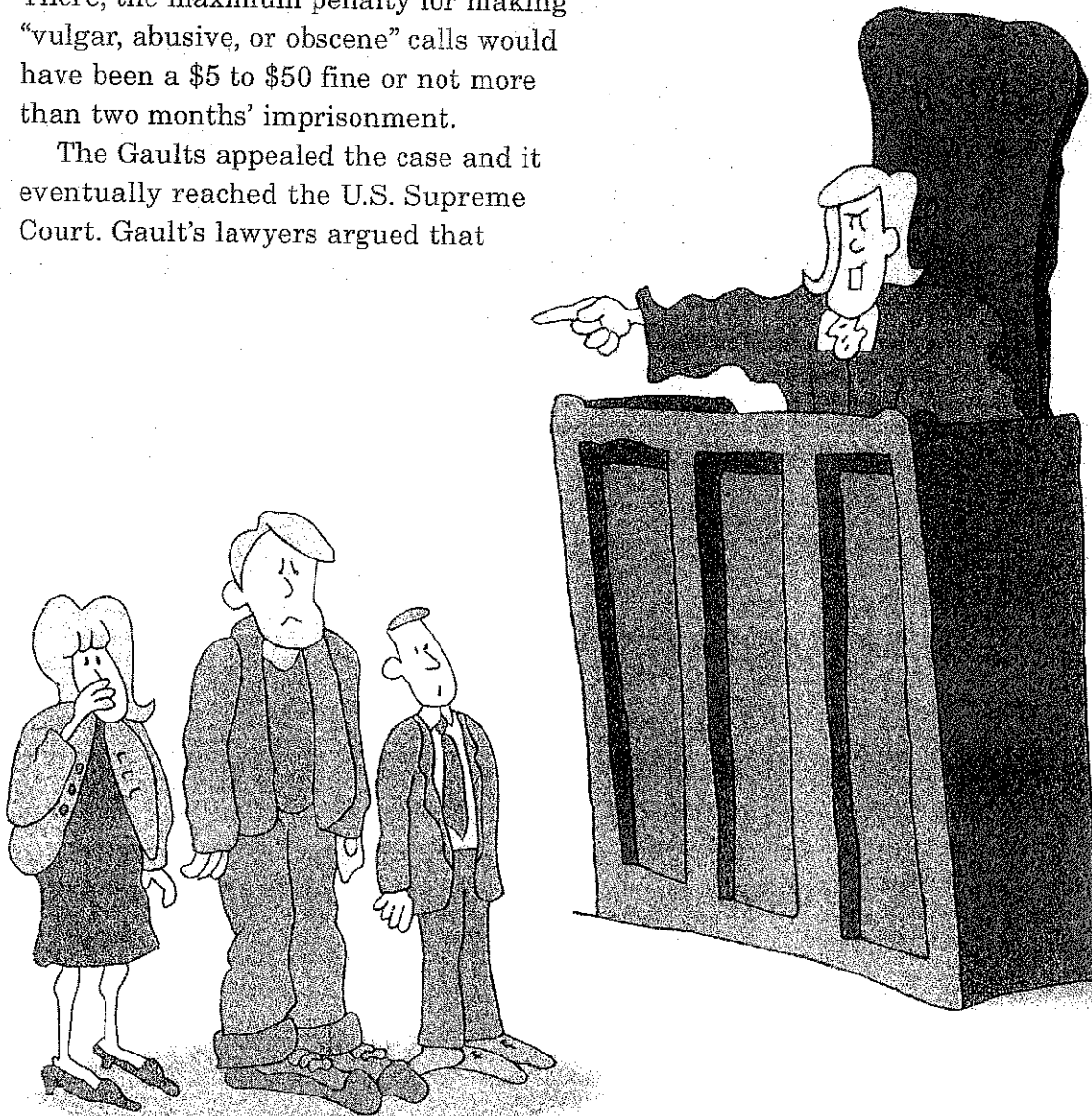


In the end, the judge ruled that Gerald was guilty of violating a state law that said that a person who "in the presence or hearing of any woman or child...uses vulgar, abusive, or obscene language, is guilty of a misdemeanor." The judge sentenced Gerald to the State Industrial School for juvenile delinquents until he reached age 21.

If Gerald had been 18, he would have been tried in a regular criminal court. There, the maximum penalty for making "vulgar, abusive, or obscene" calls would have been a \$5 to \$50 fine or not more than two months' imprisonment.

The Gaults appealed the case and it eventually reached the U.S. Supreme Court. Gault's lawyers argued that

the procedure used in Gerald's case had denied him due process under the Fourteenth Amendment. Attorneys for the state argued that the informal proceedings under the juvenile court system were intended to help juveniles, rather than treat them as regular criminals. They said that this system would be undermined if the Court gave young offenders all the specific guarantees in the Bill of Rights.





What conflicts might arise over protecting the rights of an individual and protecting society?

How can the rights of the individual and the rights of society conflict?

Problems of due process involve two government responsibilities. These responsibilities are to

- ① protect the rights of an individual who may have broken the law
- ② protect everyone else from people who break the law and endanger the lives, liberty, or property of others

These responsibilities sometimes conflict. Balancing them is a difficult job. It is the duty of government and the courts to balance these responsibilities.

Protecting the individual from unfair treatment by government is among the most important protections of our constitutional democracy.

We have discussed due process of law as it applies to the rights of someone accused of a crime. It is important to remember that the right to due process means the right to be treated fairly by all the agencies of government, not just the courts and law enforcement.

Due process of law has been called the "primary and indispensable [necessary] foundation of individual freedom" because it protects the individual from government wrongdoing. Due process applies to local school board hearings, to congressional hearings, and to hearings of the administrative agencies of your state and federal governments.



How might the right to due process of law protect the individual?

LESSON REVIEW

- ① Where in the Constitution will you find the two due process clauses? In what way are the two clauses different?
- ② What is the meaning of due process?
- ③ Why do you think the guarantee of due process is so important?
- ④ Why must all agencies of government protect the individual's right to due process of law?

ACTIVITIES

- ① With a partner, videotape an interview with your school principal or a member of your school board. Ask them about the policy in your school district regarding due process rights of students. Show the tape to your class and explain what you learned.
- ② With a partner search the Constitution to see how many references each of you can find to elements related to fair procedures and due process of law. Combine your lists and share them with the class.
- ③ Draw a picture or a poster. On one side of your picture illustrate a situation in which a due process right is being violated. On the other side illustrate the same situation but with the due process right being protected.
- ④ With your teacher's help, invite a police officer to your class to discuss how the police have to protect due process rights when they suspect that someone has committed a crime. Prepare questions to ask your guest during the visit.